

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WILLIAM JESSIE BROWN,

Petitioner,

v.

Case No. 13-15206

STEVEN RIVARD,

Respondent.

**OPINION AND ORDER DISMISSING CASE WITHOUT PREJUDICE AND DENYING A
CERTIFICATE OF APPEALABILITY**

Petitioner initiated this action by filing a “Motion to Hold Petition in Abeyance.” The motion could not be construed as a habeas petition itself because it did not comply with Rule 2(c) of the Rules Governing Section 2254 Cases. Petitioner also failed to file an application to proceed in *forma pauperis* or the \$5.00 filing fee. As a result, the court issued an order on January 31, 2014, directing Petitioner to file an application for habeas relief complying with the requirements of Rule 2(d) within twenty-one days.

Instead of complying with the order, Petitioner sent a letter indicating that it was not his intention to file a habeas petition, but instead to file papers indicating that he is pursuing state court remedies and will file a petition in the future. He further indicated that he has already filed such a pleading that was accepted as a habeas petition in *Brown v. Rivard*, No. 13-14129.

Because Petitioner has neither filed an application for habeas relief, nor paid the required filing fee or submitted an application to proceed in *forma pauperis*, and because the time for correcting these deficiencies has elapsed, the court dismisses this

case without prejudice.

Before Petitioner may appeal this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a federal court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” See *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly,

IT IS ORDERED that this case is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 28, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 28, 2014, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522